

Rs. 20, and in default of paying the fines that they should suffer simple imprisonment for 21 days (s. 250 of the Code of Criminal Procedure), and he sanctioned the prosecution of the complainants and their witnesses for instituting a false case and for perjury.

The District and Sessions Judge of Nuddea quashed that portion of the Magistrate's order granting sanction to prosecute, but he declined to interfere with that portion of the order which awarded compensation to the accused. Kala Chand Sheikh and the other complainants then presented a petition to the High Court, praying that the order of the Assistant Magistrate awarding compensation should be set aside as illegal, and made without jurisdiction, on the ground, amongst others, that charging a person falsely with illegally seizing and detaining cattle under s. 20 of the Cattle Trespass Act is not an offence.

Baboo *Jushoda Nund Pramanik*, and Baboo *Doorga Doss Dutt* for the petitioners.

The judgment of the Court (PRINSEP and BEVERLEY, JJ.) was as follows:—

For the reasons given in the case of *Pitchi v. Aukappa* (1), in which we concur, the award of compensation under s. 250 of the Criminal Procedure Code, ordered by the Magistrate to be paid by the petitioner in consequence of his having made a frivolous and vexatious complaint of illegal seizure of his cattle, must be set aside, and the fine, if paid, must be refunded.

P. O'K.

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

ABDUL WAHAB (COMPLAINANT) v. CHANDIA (ACCUSED.)*

1886
August 17.

Magistrate, Jurisdiction of—Powers of Second Class Magistrates—Reference to District Magistrate—Committal to Court of Sessions—Criminal Procedure Code, s. 239.

An Assistant Magistrate convicted a person under ss. 406 and 417 of the Penal Code, and referred the case to the District Magistrate for sentence under the provisions of s. 349 of the Code of Criminal Procedure.

* Criminal Reference No. 147 of 1886, made by C. C. Quince, Esq., Magistrate of Patna, dated the 21st of July 1886.

(1). I. L. R., 9 Mad., 102.

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The District Magistrate was of opinion that the offence was one properly punishable under s. 420 of the Penal Code, and one which the Assistant Magistrate had no jurisdiction to deal with, and that therefore the reference under s. 349 was *ultra vires* and illegal. On a reference to the High Court:

Held, that the Assistant Magistrate was not wholly without jurisdiction, as he was competent to commit the accused to the Court of Sessions, though not to hold a trial, and that the District Magistrate might, if he thought proper, commit the accused to the Court of Sessions.

THIS was a reference to the High Court by the District Magistrate of Patna, under the provisions of s. 438 of the Code of Criminal Procedure. The terms of the reference are as follows:—

"This case was tried by the Assistant Magistrate of Behar, who found the accused person guilty of offences under ss. 417 and 406 of the Penal Code and forwarded her with the proceedings in the case to the District Magistrate in order that a more severe punishment might be imposed than the Assistant Magistrate, who has the powers of a Magistrate of the second class, is empowered to inflict.

"The charge against the accused is that she dishonestly induced the complainant Mussammat Baharun to make over to her cash and ornaments of considerable value by pretending that she could get a charm worked upon them which would have the effect of enabling the owner to rear healthy children. I think it is quite clear that if the accused has committed any offence, it is an offence punishable under s. 420 of the Penal Code, which a second class Magistrate is not competent to try, the delivery of the property being of the very essence of the offence, and that the Assistant Magistrate could not give himself jurisdiction by reducing the offence to one of ordinary cheating under s. 417 of the Penal Code.

"Section 349 of the Criminal Procedure Code only applies to cases dealt with by a Magistrate 'having jurisdiction,' which evidently means jurisdiction to try the case, and as the Assistant Magistrate had not such jurisdiction, his proceedings, so far as the framing of the charge and the reference made under s. 349 of the Criminal Procedure Code are concerned were *ultra vires* and illegal.

"Under these circumstances, I am doubtful whether I can legally deal with the case either by myself, trying the accused for an offence under s. 420 of the Penal Code, or by committing her for

trial to the Court of Sessions, inasmuch as, according to my view, the case has not been legally brought before me for disposal. I therefore solicit the orders of the Court, and would recommend ~~that~~ the charge framed by the Assistant Magistrate and the final order passed by him be set aside, and that he be directed to commit the accused person for trial to the Court of Sessions, the offence being a serious one, and being punishable with imprisonment for seven years.

"Before making this reference I gave the Assistant Magistrate the opportunity of justifying his order, but he states that he has no remarks or explanation to offer, and refers to the order itself as containing the grounds on which it was passed."

No one appeared on the reference.

The judgment of the Court (PRINSEP and GHOSE, JJ.) was as follows:—

This case has been referred to the District Magistrate under s. 349 of the Code of Criminal Procedure by the Assistant Magistrate who exercises powers of the second class, and has found the accused guilty under ss. 406, 417 of the Penal Code, the sentence which he can pass being in his opinion inadequate. The District Magistrate is of opinion that the offence committed is under s. 420 of the Penal Code, which is an offence beyond the jurisdiction of the Assistant Magistrate to try.

Section 349 of the Code of Criminal Procedure empowers the District Magistrate to pass such judgment, sentence or order in the case as he thinks fit, and as is "according to law." Now, although the Assistant Magistrate was not competent to hold a trial of an offence under s. 420 of the Penal Code, he was competent to hold an inquiry, and commit to the Court of Sessions, so that he was not entirely without jurisdiction, and could have committed the case instead of referring it to the District Magistrate. The District Magistrate is moreover competent, in a case of this description, to pass such order as he thinks fit, and as is according to law, and he can consequently, if he thinks proper, commit the accused to the Court of Sessions. We may refer the District Magistrate to the cases of *In the matter of Chinnimarigadu* (1); and *Imperatrix v. Abdulla* (2).

P. O'K.

(1) I. L. R., 1 Mad., 289.

(2) I. L. R., 4 Bom., 240.

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